

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
MCC Iowa, LLC)	CSR 6438-E
)	
)	
Petition for Determination of Effective Competition)	
in Carroll, IA)	

MEMORANDUM OPINION AND ORDER

Adopted: December 28, 2005

Released: December 29, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. MCC Iowa, LLC (“Mediacom”) has filed with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination of effective competition in Carroll, Iowa. Mediacom alleges that its cable system serving this community is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”),¹ and the Commission's implementing rules, and are therefore exempt from cable rate regulation. More particularly, Mediacom claims the presence of effective competition in the Community stems from the competing services provided by two unaffiliated direct broadcast satellite (“DBS”) providers, DirecTV and Dish Network. Mediacom claims it is subject to effective competition in this Community under the “competing provider” effective competition test set forth in Section 623(1)(1)(B) of the Communications Act.² The petition is opposed by the City of Carroll, Iowa (the “City” or “Carroll”).

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵

¹ 47 U.S.C. § 543(1).

² See 47 U.S.C. § 543(1)(1)(B).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁶ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁷ The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.⁸ In view of this DBS growth data, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁹ We further find that Mediacom has demonstrated that Carroll is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied. The City also accepts that the first prong of the Competing Provider Test is satisfied.¹⁰

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom compared its residential subscriber number of 2,951 for the franchise area against the aggregate total DBS providers' subscribership for the franchise area and found that it is the largest MVPD for the franchise area with over 50 percent of the households in the franchise area subscribing to Mediacom's service.¹¹ Mediacom identified the number of subscribers attributable to the DBS providers within the City on a zip code basis.¹² Mediacom provided DBS subscriber calculations developed by Media Business Corporation ("MBC"), which show that 16.06 percent of franchise area households subscribe to MVPD services of the two DBS providers.¹³ MBC utilized 2000 Census data for the City.¹⁴ MBC compared the 2000 Census households for the community with the households in the U.S. Postal

⁶ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶54-55 (rel. Feb. 4, 2005).

⁹ *See* 47 C.F.R. § 76.905(g).

¹⁰ Opposition at 2.

¹¹ Mediacom Petition at 6.

¹² *Id.* Mediacom asserts that it totaled those subscribers reported as residing in the area that was identified through geocoding and mapping of individual Zip Code+4 exchanges, as falling within the Franchise Area. *See* Exhibit E-SBCA DBS Providers's Subscriber Summary; Exhibit F- SBCA Zip Code+4 Competition Methodology Used to Generate Report.

¹³ Mediacom Petition at 7.

¹⁴ *Id.* at 6. Exhibit F.

Zip Code areas encompassing the community, and allocated that proportion of the DBS subscribers within such zip code to the community.¹⁵

5. The City of Carroll argues that Mediacom has not met its burden of demonstrating that the number of DBS subscribers within the City exceeds 15 percent of the households in the Mediacom franchise area.¹⁶ It contends that Mediacom's reference to a report provided by Satellite Broadcasting and Communications Association ("SBCA") identifying the number of DBS subscribers apparently associated with nine-digit zip codes in the City and Mediacom's reference to 2000 Census calculations identifying the number of households within the franchise area fails to provide the Commission with sufficient documentation necessary to verify the accuracy of Mediacom's conclusions.¹⁷ The City also argues that neither the Commission nor the City has the ability to verify whether the zip code information provided by Mediacom to SBCA is accurate for the jurisdictional boundaries of the City.¹⁸ Moreover, the City points out that Mediacom attempted to identify the nine-digit zip codes for the City, however the City asserts that Mediacom provides no clarification regarding how it outlined the franchise area and how it determined the appropriate nine-digit zip codes to provide to SBCA to appropriately verify its calculations.¹⁹ The City also argues that Mediacom's subscriber totals may have been miscalculated and that Mediacom should not be permitted to utilize census information which is in excess of five years old and compare it to current DBS penetration numbers because even a minor increase in the total number of households in the last five years would serve to reduce the penetration level below the 15 percent minimum threshold.²⁰

6. In its Reply, Mediacom states that the City ignores the fact that the zip code information provided by Mediacom to SBCA only included those zip codes that could be determined with the strongest certainty to be within the city boundaries.²¹ It also states that it is incumbent on the City to come forward with evidence that counters that submitted by Mediacom and the City has failed to present any such evidence.²² Moreover, Mediacom argues that the City does nothing more than attempt to discredit Mediacom's petition by asserting that the 2000 Census data should not be used because the information is outdated, but the City presents no independent evidence of household growth.²³ Mediacom asserts that Census 2000 provides a reliable, unbiased, and consistent source of household data that is appropriate for use in connection with effective competition determinations.²⁴

7. The Commission repeatedly has accepted DBS subscriber reports provided by the SBCA and the Zip Code+4 methodology when determining the number of subscribers to DBS providers within franchise areas on a franchise-specific Zip Code+4 basis in satisfaction of Section 76.907(c) of the

¹⁵ *Id.*

¹⁶ Opposition at 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5.

²¹ Reply at 1.

²² *Id.* at 2.

²³ *Id.*

²⁴ *Id.*

Commission's rules.²⁵ We find this method of determining DBS subscribers within a franchise area to be reasonable and sufficiently reliable for purposes of determining the presence of effective competition.²⁶ The City offers unsubstantiated objections regarding the specific zip codes included in Mediacom's SBCA DBS subscriber report. Without more, we cannot discredit Mediacom's submission. The City is knowledgeable of the boundaries of Mediacom's franchise area and able to determine the Zip Code+4 exchanges that fall within those boundaries. The City failed to identify any specific errors to the SBCA report. With regard to its concern that the use of 2000 Census household data is inappropriate since Carroll is a growing area and the 2000 Census data may be outdated, we note that the City offers no data or documentation and fails to present alternative household data than that provided by Mediacom. Although the Commission will accept more recent household data that is demonstrated to be reliable, no alternate showing of household data was provided by the City. We find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the City. Therefore the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable system serving the City is subject to effective competition.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by MCC Iowa, LLC in Carroll, Iowa **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service in Carroll, Iowa **IS REVOKED**.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.²⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckert
Deputy Chief, Policy Division, Media Bureau

²⁵ See 47 C.F.R. § 76.907(c).

²⁶ See *Adelphia Cable Communications*, 20 FCC Rcd 4979 (MB 2005).

²⁷ 47 C.F.R. § 0.283.

Attachment A

Cable Operator Subject to Competing Provider Effective Competition

MCC IOWA LLC: CSR 6438-E

Community	CUIDS	CPR*	2000	DBS
			Census	Households ⁺
Carroll	IA0050	16.06%	4,173	670

CPR= Percent DBS penetration